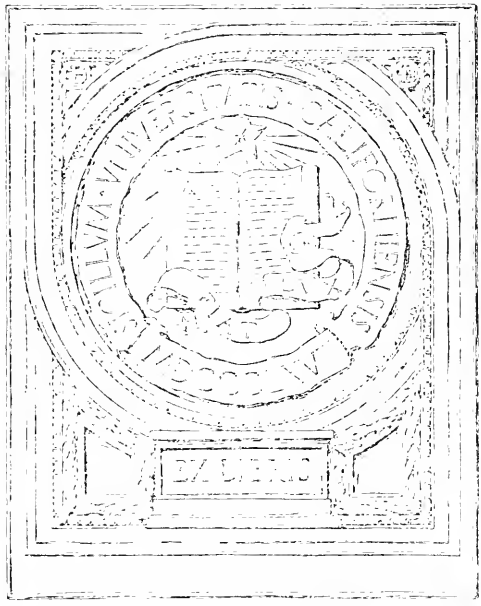
ALABAMA CLAIMS



THE ALABAMA CLAIMS.

A SYNOPSIS

BY

T. L. CLINGMAN,

ATTORNEY FOR

CERTAIN UNDERWRITERS.

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THE ALABAMA CLAIMS.

The act of Congress approved June the 23d, 1874, contains a provision in the following words:

"No claim shall be admissible or allowed by the court by or in behalf of any insurance company or insurer, either in its or his own right, or as assignee or otherwise in the right of a person or party insured, unless such claimant shall show to the satisfaction of said court that during the late rebellion the sum of its or his losses in respect to its or his war risks exceeded the sum of its or his premiums or other gains upon or in respect to such war risks; and in case of any such allowance, the same shall not be greater than such excess of loss."

Such a provision as the above seems so singular in itself as to require explanation. If insurance companies or insurers have a legal or equitable claim to a share of the fund paid under the award at Geneva, it is difficult to see how that right would be lost by its profits or losses in its general business operations in that class of cases.

No one could successfully contest the claim of a merchant or a hotel-keeper merely on the ground that in his general business outside of the transactions with him he had realized profits. Still less likely would an attorney, who had collected a sum of money for a banking corporation, be justified in withholding the money from his client for the reason that it had made profits in its general business within the past four years.

If, on the other hand, the Government of the United States should be the rightful owner, in every sense, of the sum of money awarded at Geneva, it might undoubtedly bestow such sums as it might think proper on corporations or individuals. It strikes the mind as singular, however,

that among the many sufferers in the late civil war it should select insurance companies as the object of its bounty. It is still more surprising that it should have, as other provisions of this act declare, selected those who had suffered from the acts of three ships especially named, to the exclusion of all sufferers from the depredations of a number of other ships equally destructive of the commerce of the United States. But it is still more remarkable that it should relieve those who were injured by the Shenandoah after she left the British port of Melbourne, and rigidly exclude the many who suffered from the action of the same ship before she entered that port. The provisions of the act in this view appear so extraordinary, not to say whimsical, as to require explanation.

What are the real facts in the case? Was this money paid to the Government of the United States for its own use, or was the payment made to satisfy the claims of others?

The fact is well known that the Government of the United States did present certain claims for indirect losses from the action of the Alabama and other Confederate cruisers, "in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payment of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war, and the suppression of the rebellion." But these "indirect claims" met with such decided opposition on the part of Great Britain that it seemed for a time that any settlement by arbitration might be defeated, unless the United States should consent to withdraw those claims.

During the discussion, the Secretary of State, in a letter to General Schenck, dated April 23, 1872, used this language:

"Neither the Government of the United States, nor, so far as I can hear, any considerable number of the American people, have ever attached much importance to the indirect claims, or have ever expected or desired any award of

damages on their account. * * In the correspondence, I have gone as far as prudence would allow in intimating that we neither desired nor expected any pecuniary award, and that we should be content with an award; that a State is not liable in pecuniary damages for the indirect results of a failure to observe its neutral obligations."

At a subsequent period, before the Tribunal of Arbitration, on the 15th of June, the United States presented its Argument, while the British Argument was withheld, the British Agent asked for an adjournment, in order that the two Governments might arrive at some understanding as to the indirect claims.

On June 19th the Arbitrators stated, "That after the most careful perusal of all that has been urged on the part of the Government of the United States, in respect to these claims, they have arrived, individually and collectively, at the conclusion that these claims do not constitute, upon the principle of international law, applicable to such cases, good foundation for an award of compensation or computation of damages between nations; and should, upon such principles, be wholly excluded from the consideration of the Tribunal in making its award, even if there was no disagreement between the two Governments as to the competency of the Tribunal to decide thereon." (*Correspondence respecting Geneva Arbitration*, *p.* 152.)

The same day the counsel of the United States advised Mr. Davis, the Agent, that the statement of the Tribunal, in part quoted above, "must be received by the United States as determinative of its judgment upon the questions of public law involved." They therefore advised that the United States "should announce to the Tribunal that the said claims, covered by its opinion, will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration by the Tribunal in making its award." (*Correspondence respecting the Geneva Arbitration*, *p.* 152.)

At a subsequent meeting of the Tribunal, Mr. Davis, after receiving instructions from his Government, said:

"The declaration made by the Tribunal, individually and collectively, respecting the claims presented by the United States for the award of the Tribunal, for, first, the losses in the transfer of the American commercial marine to the British flag; second, the enhanced payments of insurance; and, third, the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion, is accepted by the President of the United States as determinative of their judgment upon the important question of public law involved. The Agent of the United States is authorized to say, that consequently the above-mentioned claims will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made." (*See Correspondence respecting Geneva Arbitration, p.* 154.

On the 27th of June, the representatives of Great Britain, understanding thus from the Agent of the United States, "That the several claims particularly mentioned in that statement will not be further insisted upon before the Tribunal by the United States, and may be excluded from all consideration in any award that may be made, and assuming that the Arbitrators will, upon such statement, think fit now to declare that the said several claims are, and from henceforth will be, wholly excluded from their consideration, and will embody such declaration in their protocol of this day's proceedings," &c., expressed their satisfaction, and delivered their printed argument "with reference to the other claims, to the consideration of which, by the Tribunal, no exception has been taken on the part of Her Majesty's Government."

"Count Sclopis, in behalf of all the arbitrators, then declared that the said claims for indirect losses, mentioned in the statement by the agent of the United States on the 25th inst., and referred to in the statement just made by the agent of Her Britannic Majesty, are, and from henceforth, wholly excluded from the consideration of the Tribunal, and directed the secretary to embody the declaration in the

protocol of this day's proceedings." (Protocol, vii, of June 27, 1872.)

It is therefore indisputable that the claims of the United States for indirect losses, including "the enhanced payments of insurance" (*or war premiums*) were wholly excluded from the consideration of the Tribunal. No language that could have been selected would have expressed this fact in stronger terms.

The Tribunal then proceeded to consider the direct claims, which included two heads, viz: 1st. The claims for direct losses growing out of the destruction of vessels and their cargoes by the insurgent cruisers. 2d. The national expenditure in the pursuit of these cruisers. As to the second class of these claims, the decision of the Tribunal was as follows:

"Whereas, so far as relates to the particulars of the indemnity claimed by the United States, the costs of pursuit of the Confederate cruisers are not, in the judgment of the Tribunal, properly distinguishable from the general expenses of the war carried on by the United States; the Tribunal is, therefore, of opinion, by a majority of three to two voices, that there is no ground for awarding to the United States any sum by way of indemnity under this head."

The Tribunal proceeded to inquire which of the ships Great Britain should be held responsible for on account of her alleged negligence, and it was decided that she should be held accountable for the acts of the Alabama, the Florida, and their tenders, and for the Shenandoah, from and after her departure from Melbourne.

The representatives of the United States presented a carefully prepared statement, embracing the names of the ships destroyed, with their values, as well as of those of their cargoes, and the names of their owners, &c. This list specified the names of insurance companies, as well as of individual claimants. Indeed, it will be seen from the published correspondence of the Secretary of State that the cases of claims of insurance companies were, from the early

part of the war, presented and urged just as those of the private owners were.

Before the arbitrators the commissioners of the United States referred to the fact that it had been repeatedly settled by judicial decisions, both in England and America, that an insurer who had paid for a vessel as a total loss, was subrogated to the rights of the original owner. In other words, he became entitled to the "*spes recuperandi*," and might fairly claim all that the insured owner could have done if there had been no insurance on the property.

The British commissioners admitted that such was the law of Great Britain, as well as of the United States, and in their Counter Case the following language is used:

"The American Insurance Companies who have paid the owners as for a total loss are, in our opinion, entitled to be subrogated to the rights of the latter, according to the well-known principle that an underwriter who has paid as for a total loss, acquires the rights of the assured in respect of the subject-matter of insurance. This principle was explained and acted on in the well-known English cases of Randall *v.* Cochran, 1 Ves., Sen., 98, and The Quebec Fire Insurance Company *v.* St. Louis, 7 Moore, P. C., 286, and is well recognized by the courts of America. On the other hand, it is equally clear that underwriters cannot be entitled to anything more than the assured themselves, for the claim of the former is founded on nothing else than their title to be subrogated to the rights which the latter possessed, and which therefore cannot possibly be more extensive than the claim which the latter would be entitled to maintain. From these considerations two consequences follow: In the first place, where the claimant is the insurance company, and not the owner, compensation cannot be due for any sum exceeding the amount of the actual loss sustained by the owner, however much that sum may fall short of the amount paid by the company by reason of the property having been over-insured. In the second place, wherever the owner puts forward a claim for his loss at the same time that the insurance company also claims

the money paid by them in respect of the same loss, such a double claim must at once be absolutely rejected, since to allow it would be in effect to sanction the payment of the loss twice over." (British Counter Case, p. 135.)

In reply to the criticisms of the merits of the private claims by the British Counter Case, the following words are used in the United States Argument.

The claims now under discussion (excluding those for increased war premiums) may be divided into two general classes:

"1st. Claims for the alleged value of property destroyed by the several cruisers.

"2d. Claims arising from damages in the destruction of property, but over and above its value.

"Under the first class would be included (*a*) owners' claims for the values of vessels destroyed; (*b*) merchants' claims for the values of goods destroyed; (*c*) whalers and fishermen's claims for the values of oil or fish destroyed; (*d*) passengers, officers, and sailors' claims for the values of personal property destroyed; (*e*) the claims of Insurance Companies for the values of property destroyed, for which they had paid the owners in insurance * * * * The claims of Insurance Companies for the value of property destroyed, for which they have paid the owners the insurance, is the last division under the claims of the first class. We readily admit that whenever the owner put forward a claim for his loss at the same time that the Insurance Company also claims the money paid by them in respect of the same loss, then only one value of the property destroyed can be allowed, but we insist that in all such cases the award should be equal to the full value of the property destroyed.

"It was the intention of the United States, in preparing the list of claims to indicate whenever double claims of this class occurred, when it was evident, upon a simple examination of the papers, that such double claims were made, and it will be found that very few, if any, of such claims exist, except in the case of some of the whaling vessels

which were destroyed by the *Shenandoah*, there being none of this class of double claims in the case of merchant ships or property destroyed on merchant ships." (*U. S. Argument*, *p.* 554.)

When the arbitrators proceeded to consider the detailed statement of the values of the ships, their cargoes, &c., it was seen that the estimate of the values as claimed by the Agent of the United States was much higher than that made by the experts on the side of Great Britain. The United States claimed $14,437,143.51, with interest thereon at seven per cent., as the gross sum that should be awarded.

The Agent of Great Britain claimed that the proper sum to be awarded was $7,074,715, with such additional sum as the Tribunal might give as interest.

At the session of the 30th of August, "the Tribunal having discussed in general the award of a gross sum, requested Mr. Steampfli, one of the arbitrators, to present for the next conference copies of a synoptical table," which he had prepared on the subject. (See Protocol, xxviii.)

At the session of September 2d, the Tribunal, by a majority of four to one, decided that interest should be admitted as an element in the calculation of a sum in gross. Mr. Staempfli presented to the Tribunal the synoptical table which he had prepared as a proposition for the determination of a sum in gross in the following words and figures:

Estimate of Mr. Staempfli for the determination of a sum in gross.

	After the late American Table.	British Allowance.	Mean.
Amount of claims	$14,437,000	$7,074,000	$10,905,000
Expenditure in pursuit	6,735,000	940,000	Struck out.
Prospective profits and interruption of voyage	4,009,100	Struck out as such, but for wages	588,000
		25 per cent. on the values of vessels	400,000
			$11,893,000

Round sum		$12,000,000
Interest from the 1st January, 1864, to the 15th September, 1872.		
1. At 5 per cent. during eight years and eight and one half months.		
8 x $600,000=$4,800,000		
8½ x 50,000= 425,000		
	5,225,000	
		17,225,000
Eventually one year's interest more		17,825,000
2. At 6 per cent. during eight years and eight and one half months.		
8 x $720,000=$5,760,000		
8½ x 60,000= 510,000		
	6,270,000	18,270,000
Eventually one year's interest more		18,990,000
3. At 7 per cent. during eight years and eight and one half months.		
8 x $840,000=$6,720,000		
8½ x 70,000= 595,000		
	7,315,000	19,315,000
Eventually one year's interest more		840,000
		20,155,000
Round sum		$20,000,000

At the same session, Sir Alexander Cockburn, as one of the Arbitrators, presented a memorandum criticising the estimate of Mr. Staempfli, and he also presented his own estimate or table, as follows: .

Table in reference to the estimate of Mr. Staempfli.

Total United States claim in the last revised tables	$14,437,143

Necessary reduction to be made from the above supposed total:		
Double claims	$1,682,243	
New claims	1,450,000	
One half gross freight	503,576	
		3,635,819
Making the total reduced claim		10,801,324
As against the British estimate of		7,464,764
The mean of these two sums is		9,133,044
Add to this Mr. Staempfli's allowance in lieu of prospective catch:		
One year's wages	588,000	
Twenty-five per cent. on the value of vessels	400,000	
		988,000
		$10,121,044

At the same session, "after a detailed deliberation, a majority of the Tribunal, of four to one, decided, under the VIIth article of the Treaty of Washington, to award in gross the sum of $15,500,000, to be paid in gold, by Great Britain to the United States, in the time and manner provided by the said article of the Treaty of Washington." (See Protocol xxix.)

If, to the estimate of Sir Alexander Cockburn, there be added interest at the rate of six per cent. for the period of eight years, eight and one-half months, the sum will be $15,409,285. It thus appears that the sum in gross actually awarded was not $100,000 above this amount. An examination of the whole case shows conclusively that the award was made to meet the individual losses, the detailed statement of which was presented by the United States to the Tribunal.

In his statement on the part of the United States as a reason why all the items of individual losses should be es-

timated in the award, Mr. Davis spoke in the following words:

"III. The United States make claim for all the undivided shares of a ship, whether the owner of the share, however small, makes claim or not, because the United States will be obliged to indemnify all the owners, in case the Tribunal shall accord a gross sum to the United States. If this were not done there would be an evident injustice."

After the decision of the Tribunal had been made announcing the result, Mr. Davis, in his dispatch to Mr. Fish, dated Paris, 21st of September, 1872, giving a report of his action as agent of the United States, says, (see Report, as recently published, p. 10:)

"The neutral Arbitrators and Mr. Adams, from the beginning of the proceedings, were convinced of the policy of awarding a sum in gross.

"For some weeks before the decision was given I felt sure that the Arbitrators would not consent to send the Case to Assessors until they should have exhausted all efforts to agree themselves upon the sum to be paid.

"We therefore devoted our energies towards securing such a sum as should be practically an indemnity to the sufferers. Whether we have or have not been successful, can be determined only by the final division of the sum."

Why was there an anxiety felt to secure a sum in gross? If a sum in gross should not be awarded, it was provided by article 10 of the treaty that the cases should go to a Board of Assessors, at which both Governments might be represented by their counsel. As this board might sit for three years it was felt on both sides desirable to avoid a second tedious examination of so large a number of claims to be canvassed and discussed by the agents of both Governments. These reasons were assigned by the Secretary of State and pressed on the attention of the representatives of the United States, and finally prevailed to induce the Tribunal to award the sum in gross.

Does the form of the award as thus made so change its character as to relieve the Government of its obligation

to indemnify those for whose losses the money was undoubtedly paid by Great Britain? Suppose that an attorney who was claiming damages for the loss of a ship should say to the court, that, as there were many owners of the ship whose shares varied greatly in amount, and therefore the ascertaining the value of their several shares would be very tedious, and delay the court for a long period of time, and therefore he would be content if a sum were awarded for the ship as a whole sufficient, however, to cover all the losses, and that he would out of this amount be able to settle with his clients according to the value of their several claims, and should the court award at his request a sum in gross, would such attorney be authorized to retain this money for his own use or bestow it on some other clients whose cases he had recently lost? A mere statement of such a case shows the absurdity of such a proceeding. Is the situation of the Government of the United States in respect to the fund awarded really different in substance and the principles of natural justice from the one above stated?

But it has been said that the Government of the United States cannot be an attorney for its citizens. To make it appear that the Government was not in this transaction, in substance and in fact, a representative, agent, guardian, or attorney of its citizens, would require that a construction should be resorted to far more strict than that demanded upon the principles of the resolutions of 1798.

Chief Justice Kent, in the case of Gracie *v.* The New York Insurance Company, in delivering the opinion of the court, said: "If France should at any future period agree to and actually make compensation for the capture and condemnation in question, the Government of the United States, to whom the compensation in the first instance would be payable, would become *trustee* for the party having the equitable title to the reimbursement; and this would clearly be the defendants, (the underwriters,) if they should pay the amount."

A number of authorities might be found to this effect.

With respect to these claims, the Government of the United States forbade individuals to apply to Great Britain for redress, and claimed the exclusive right to present them. President Grant, too, in his message of December 5, 1870, recommended Congress to make a settlement with these private claimants, "so that the Government shall have the *ownership of the private claims* as well as the responsible control of all the demands against Great Britain."

After the confirmation of the Treaty at Washington, the State Department called upon all its citizens having claims known severally as "Alabama claims," to present them to the Department of State. Its letter bears date September, 1871, and calls on all persons having these claims to present, "to do so without delay," because "the time for presenting the Case of the United States expires on the 16th of December next."

At its previous conference, with reference to this matter, similar grounds were taken by the Government, and the like language used. During the proceedings before the Arbitrators with respect to all those claims, the Government occupied a similar attitude. It seems difficult to distinguish its case from that of a law firm that should in this city advertise for business claims of a certain class, except that the liability of the United States on the principles of justice is greater, inasmuch as it possessed a power that no law law firm has of preventing its citizens from presenting their claims through any other agency than its own.

The Government undoubtedly obtained this money by presenting the claims of its citizens for injuries done them, and insisted that insurers, who had paid for the property destroyed, were entitled to stand in the position of the original owner. It was by including the claims of insurers that nearly one-half the sum awarded was obtained. Can it honestly now repudiate its former acts and refuse to pay to those whose claims were in fact considered, estimated for, and allowed as fully as any other class of claimants?

Those opposing the payment to underwriters denounce

corporations "that have made money during the war." Corporations are composed of men, women, and children. It has not hitherto been settled that men are so odious that they are not permitted to receive money for which they have given an equivalent, while women and children are regarded as entitled to favor in the estimation of courts of justice. How is it that their association in an incorporated company should render them odious?

If an estimate could be made of the profits of stockholders in all the corporations that have existed in the United States for the last ten or twenty years, it is not probable that they would exceed the average of all the different kinds of industrial occupations of the country. It has been said that a large majority of insurance companies have failed. This is probably true. But nevertheless corporations are useful, because they are instrumental in effecting results that individual enterprise cannot accomplish.

A single one of these insurance companies insured property of the value, for the year 1863, of $270,000,000; 1864, $320,000,000; 1865, $380,000,000.

This large amount of property was in part kept afloat by a marine insurance company. Without such aid a large number of ships would probably have remained idle in port, or been transferred to a foreign flag, because owners would not have risked their loss, though they were willing to pay something to a corporation that would become responsible in case they were captured.

It has been proclaimed in debate, however, as a reason for excluding insurance companies, that one of them might receive out of the award more than a million and a half of dollars. If so, however, it can only obtain a large sum by showing that it has paid out a similar amount. It has never been pretended that a banking corporation, or an individual who advanced a large sum of money, was not entitled to have it returned, on the same principles as one who lent a small sum. If this corporation is entitled to receive a large amount, it must be remembered that it has a great number of shareholders, and that it has done a

large business, and paid out a great sum of money to those whose ships were destroyed. Is it not therefore to stand, as to its payments, on the same ground with an individual who has insured a single ship and paid for its loss?

Why, then, should there be a discrimination against a corporation, or an attempt to render it odious? In most of the States of the Union, if not in all of them, it is regarded as just as much a crime to rob a bank as a hen roost, and a conspiracy to defraud an insurance company is punished just as a conspiracy to defraud an individual.

But, again, a persistent effort is made to divert so much at least of this fund as was awarded to meet the claims of insurance companies from that purpose, and bestow it on those who paid enhanced rates of insurance, or "*war premiums*," as they are frequently termed. It is an indisputable fact that these latter claims were presented at Geneva; that they were earnestly urged, and rejected by the Tribunal of Arbitrators; and it was expressly and in the the most unequivocal language declared that their claims were wholly inadmissible, and excluded from any allowance in money that might be awarded. The fact that a suit brought by an individual has been rejected by a court is generally regarded as a sufficient reason why he should not demand a sum of money that some other plaintiff has recovered at the same term of the court.

These *war premium* men, however, are much eulogized for their patriotism, and it is declared that but for them the flag of the United States would not have been kept afloat, and that the money in the hands of the Government ought to be bestowed on them, rather than given over to greedy and soulless corporations. How does the case really stand between the two classes of claimants?

A patriotic individual resolves that he will keep the flag of the United States afloat, and with that view secures a ship and cargo worth twenty thousand dollars, and determines to send them to sea; being, however, like John Gilpin's wife, possessed of a frugal mind, he determines that he will not make all this patriotic outlay at his own

risk. He thereupon goes to one of these insurance companies, and may be supposed to address it in a strain something after this fashion:

"Being a highly patriotic man, I am anxious that the flag of my country should float on the high seas. I have therefore provided a ship and cargo worth twenty thousand dollars, which I propose to send abroad. But though patriotism should be its own reward, it ought not to be expected to give money as well as itself to the public. Hence, though I intend to send out this ship, I do not propose to do it at my own pecuniary risk. You are a soulless corporation, composed only of men, women, and children, without a single spark of that patriotism that glows in my bosom. Nevertheless I know that you comply with your contracts. I understand that you will, if paid two and a half per cent. of the value of the property, be responsible for its value if lost either by negligence, storm, or the public enemy. I send out twenty thousand dollars' worth, and am willing to give you five hundred dollars to insure it against all loss. It must, however, be understood between us that the insurance must be large enough to cover not only the property, but also the five hundred dollars I now pay you, so that in case of loss of the ship I am to have back my entire patriotic contribution!"

The agent of the insurance company may be supposed to reply in such words as these: "It is lamentably true that we are only a soulless corporation, incapable, therefore, of a patriotic emotion, but we greatly admire your patriotism, and as you are willing to risk five hundred dollars, we will risk twenty thousand dollars!"

Some months possibly after this bargain has been executed, the insurer learns that his ship has been lost, demands payment, and receives twenty thousand five hundred dollars from the soulless corporation, and is in addition thereto greatly applauded for his patriotism.

The insurance company, through the representatives of the United States, presents its claim for the value of the ship lost and paid for; the sum is computed and allowed in

making up the award, and actually paid over, and now it is proposed to withhold the money from the company, and give it, instead, to the *war premium* men as a compensation for their patriotism.

It is argued, however, that in those cases where the ships were not captured the war premiums have not been returned. It is well known, however, that merchants, in estimating the cost of their goods, include not only the amount paid abroad for them, but also the cost of freight, insurance, and tariff duties, and in their sales add a profit on all these items. While the insurances amounted to 2 or 3 per cent., the tariff taxes were often 50 or 75 per cent. All these amounts have to be repaid by the consumers, with added profits. Those who paid 1¼ per cent. additional on account of the war risk, probably made the consumers of the country pay two or three times as much, just as hotels, because currency is ten or fifteen per cent. below par, add 100 or 150 per cent. to their former prices.

It has been urged, however, that those men, by paying this additional per cent., which did not, on the average, amount to 1½ per cent., were placed at a disadvantage as against foreign ships. The same thing, however, may be said by importing merchants with respect to the tariff duties. They are compelled to pay fifty or one hundred per cent. on their goods imported, and then compete with home manufacturers who pay no duty at all. Mr. A. T. Stewart or H. B. Claflin might, with a vastly greater show, boast of their patriotism, and refer to the large sums they paid into the treasury to support their country. They, as well as the war premium men, are reimbursed by the consumers of the whole country.

It has already been stated that these war premium claims were rejected by the tribunal at Geneva. Something occurred there, however, which shows most strikingly the injustice of the attempt to exclude the insurance companies, on the ground that they made profits by reason of the war premiums. After it had been settled that the *capital* of the losses should be paid, the question arose whether the tri-

bunal, in its award of a gross sum, should include interest. Sir Roundell Palmer, the British counsel, presented an earnest argument against the allowance of interest, in which he made this point:

"With respect to the insurance companies, it must be remembered that, as against the losses which they paid, they received the benefit of the enormus war premiums which ruled at that time; and that these were the risks against which they indemnified themselves (and it cannot be doubted, so as to make their business profitable upon the whole) by those extraordinary premiums. Would it be equitable now to reimburse them not only the amount of all these losses, *but interest* thereon, without taking into account any part of the profits which they so received?" (*Supplt. to the London Gazette of October* 4, 1872, *p.* 4728.)

How did such a suggestion strike the minds of the counsel of the United States? That it embodied a degree of assurance that was amusing from its absurdity is evident from the language used in reply:

"We may also lay aside the suggestions prejudicial to the allowance of interest on the claims which, by subrogation or assignment, have been presented by the *insurers*, who have indemnified the original sufferers. So far as Great Britain and this Tribunal are concerned, who the private sufferers are, and who represent them, and whether they were insured or not, and have been paid for their insurance, are questions of no importance. But it is worth while to look this argument in the face for a moment. Some of the sufferers by the depredations of the *Alabama*, the *Florida*, and the *Shenandoah* were insured by American underwriters. These sufferers have collected their indemnity from the underwriters, and have assigned to them their claims. The enhanced premiums of insurance on general American commerce have presumptively enriched the insurance companies. Great Britain should have the benefits of these profits, and the underwriters, at least, should lose the interest on their claims. It is difficult to say whether the private or the public considerations which

enter into this syllogism are most illogical. Certainly we did not expect that the '*enhanced payment of insurance*,' which Great Britain could not tolerate, and the Tribunal has excluded as too indirect, as growing out of the acts of the cruisers, to be entertained *when presented by the merchants who had paid them*, were to be brought into play by Great Britain itself as direct enough in the general business of underwriting to reduce the indemnity on insured losses, which, if uninsured, they would have been entitled to." (*Supplt. to Lon. Gaz.*, *Oct.* 4, 1872, *p.* 4737.)

If, then, the enhanced premiums were, at the instance of Great Britain, rejected, and absolutely excluded by the Tribunal, and then, when afterwards suggested by the British counsel as a ground for not paying *interest* merely to insurance companies, for the reason that they had made profits out of these premiums, and the counsel of the United States indignantly rejected such a consideration, can our Government now, on the principles of common fairness, refuse to pay over to the insurance companies not only the *interest*, but the *principal* itself? In other words, when the British counsel suggested that though these insurance companies ought to have back their principal, yet, as they had made money out of war premiums, they should not be paid also *interest* thereon, and our Government rejected the plea with disdain, can it now refuse upon this very ground to pay not only the *interest*, but even the principal?

Among the pretexts assigned for not paying the money to those for whom it was awarded, it has been suggested that the United States has never paid off the "French spoliation claims" arising from the acts of the French cruisers prior to the year 1800. But in that case no money was paid to our Government by France. Our authorities admitted that the sufferers on our side ought to be reimbursed for their losses, and promised when able to do so. Had money then been received it would undoubtedly have been paid over. This is said because, when in 1831, by reason of the treaty with France, negotiated by

Wm. C. Rives, 25,000,000 of francs was obtained for spoliations since the year 1800, that money was paid over to the individual sufferers. If these precedents are referred to, the last one, which in its features resembles the present case, clearly ought to be followed. At any rate, the first one affords no justification for a present refusal. No trustee could excuse himself from paying money received for others by alleging that on some former occasion he declined to pay on the ground that no assets had in fact been realized by him.

In a case like the present one between individuals, there can be no doubt but that the insurers could recover in a court of justice. The United States cannot be sued as an individual might be. Ought this immunity to be regarded as a justification for refusal? Occasionally an individual is heard to say that he has so arranged his property that he does not fear suits and judgments against him. Ought the United States to place itself in such an attitude?

What Great Britain might think of such a transaction is a secondary consideration. If she were an enemy, she might well be expected to point her finger at us and say to the world, "See what the Great Republic has done. It exacted money from us to reimburse such of its citizens as had paid for ships destroyed by reason of our negligence; and now, after getting the money from us for that purpose, it refuses to pay them, and applies the money to its own uses!" What other nations think of us is undoubtedly a matter of consequence to us, but it is vastly more important for us to do justice to our own citizens and thus maintain their respect for the Government of their country.

If, in addition to the reasons assigned for obtaining an award for a sum in gross, the agents of our Government desired to veil their disappointment on account of the rejection of the claims of the Government, by such a form of award, at least our own citizens ought not to be made to suffer for this. As our representatives had the benefit of such a soothing balm to their wounded feelings, they ought to be

only the more willing to do complete justice to those whose claims enabled them to alleviate their own regrets.

Five per cent. of the sum recovered, equal to $775,000, has already been retained by the Government to reimburse it for its expenses in conducting the arbitration and constituting a board here to pass on the claims. This sum is ample for the purpose, and in fact more than sufficient to meet all the expenses incident to the transaction.

Upon an examination of the entire case, it will be seen that—

1st. The claims of the United States, as a Government, were rejected, except that there was an allowance for two or three of its own ships (of little value) destroyed, that came in under the head of direct losses.

2d. That a sum in gross was awarded to avoid the delay and trouble of having the individual cases re-examined before a board of assessors, where each Government would be contestants as to every single claim. That sum in gross was made up by estimating the amount of the individual claims, with interest added mainly, and that the excess above this amount was less than one hundred thousand dollars, which would seem, therefore, to be all that the Government could fairly claim as subject to its disposition at its own option.

3d. That in making up the amount of individual claims, those of insurance companies were included just as those of individuals; and that the suggestion by the British consul that, as they had made profits out of the war premiums paid them, at least the interest might be withheld on that ground, was indignantly and disdainfully rejected by our represenaatives.

4th. That the ample sum of $775,000, in gold, has been retained to reimburse the Government for its expenses in prosecuting the claims and distributing the amounts due to the several losers.

It would seem, therefore, that an Act similar to the bill offered by Senator Conkling ought to be passed, under

which the board now in session might consider the claims of insurers as they do those of individuals. Whatever sums might be awarded to these various companies would be applied by them as the laws of the several States under which they have been chartered already provide.

It is now evident that after all the cases, both of individual losses and insurers, are allowed, there will be a large surplus of the fund remaining. It, with accumulated interest, can be little, if any, less than $20,000,000 in currency value. It is doubtful if all the claims estimated for at Geneva, as they are likely to be cut down by the present board, will amount to more than ten millions. Certainly it is apparent that the surplus will amount to six or eight millions.

When this has been ascertained, it will be for our Government to decide whether it will return this excess to Great Britain, as an individual does an overplus of money paid by mistake, or whether it will retain it in the Treasury for the benefit of the consumers of the country generally who sustained losses by the war. If it should regard this last suggestion as inconsistent with its dignity, it might divide the surplus among such enterprises as the Centennial celebration, and the Washington and Lincoln monuments, or it may even, if it thinks fit, bestow the money upon such other classes of its citizens as claim to have been especially injured during the war, or at least who have shown the greatest anxiety to possess it.

Note.

Gentlemen who may not have leisure to examine the different volumes published will, besides other able arguments, find the subject fully treated in the speeches of Senator Thurman, delivered in the Senate May 11, 1874, and of the Hon. Lyman Tremain, in the House, June 9, 1874. To this last speech is appended a statement embracing the numerous vessels with their cargoes, their values, and the claimants for indemnity.